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<b>TERRILYN M. LEE, Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 05-1587</b>
	)	<b>Issued: January 5, 2006</b>
<b>U.S. POSTAL SERVICE, MOUNT HOLLY</b>	)	
<b>ANNEX, Mount Holly, NJ, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

On July 25, 2005 appellant filed a timely appeal from the March 23, 2005 merit decision of the Office of Workers' Compensation Programs, which found that she had no more than a six percent permanent impairment of her left lower extremity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this schedule award issue.

The issue is whether appellant has more than a six percent permanent impairment of her left lower extremity.

## **FACTUAL HISTORY**

On December 1, 2001 appellant, then a 38-year-old clerk, sustained an injury in the performance of duty when she slipped and fell. The Office accepted her claim for a left fibula fracture.<sup>1</sup>

On July 31, 2003 appellant filed a claim for a schedule award. To support her claim, she submitted a June 10, 2003 report from Dr. David Weiss, a Board-certified family practitioner, who related appellant's history, complaints and his findings on physical examination. Appellant complained of left ankle pain and stiffness, which waxed and waned. She was restricted in her activities of daily living. Dr. Weiss noted tenderness over the medial malleolus and over the distal one-third of the tibia. He also noted tenderness over the deltoid ligament. The circumference of appellant's calves measured 37 centimeters on the left, 38 on the right. Using Table 17-6, page 530, of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001), Dr. Weiss determined that appellant had an eight percent impairment of the left lower extremity due to calf atrophy. Using Figure 18-1, page 574, he determined that she had a three percent impairment due to pain. He concluded that appellant had a total left lower extremity impairment of 11 percent.

On February 2, 2004 an Office medical adviser reviewed Dr. Weiss' findings. He reported that the only difference he had with Dr. Weiss concerned the rating given for calf atrophy. He noted that, for atrophy of 1 to 1.9 centimeters, Table 17-6, page 530, of the A.M.A., *Guides* gave a range of impairment from 3 to 8 percent. As one centimeter of atrophy was very mild, he reasoned, it should represent a three percent impairment. Combining this three percent impairment with the three percent impairment Dr. Weiss reported for pain, the medical adviser concluded that appellant had a six percent permanent impairment of the left lower extremity.

On March 26, 2004 the Office issued a schedule award for a six percent permanent impairment of the left lower extremity. Appellant requested an oral hearing before an Office hearing representative, which was held on December 14, 2004.

In a decision dated March 23, 2005, the Office hearing representative affirmed the March 26, 2004 schedule award. The hearing representative found that the opinion of the Office medical adviser constituted the weight of the medical evidence.

## **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act<sup>2</sup> authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of

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<sup>1</sup> On May 19, 2002 appellant lost her balance and fell, sustaining a right cuboid avulsion fracture. Her right lower extremity is not an issue on this appeal.

<sup>2</sup> 5 U.S.C. § 8107.

permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.<sup>3</sup>

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>4</sup>

After obtaining all necessary medical evidence, the Office should route the file to the Office medical adviser for an opinion concerning the nature and percentage of impairment. The percentage should be computed in accordance with the A.M.A., *Guides*, and as a matter of course the Office medical adviser should provide rationale for the percentage of impairment specified.<sup>5</sup> Where an Office medical adviser believes that the evaluating specialist improperly appraised a particular impairment, the Office should take into consideration the opinion of its Office medical adviser in determining the amount of the schedule award.<sup>6</sup> When the Office medical adviser provides the only evaluation that conforms to the A.M.A., *Guides*, that evaluation constitutes the weight of the medical evidence.<sup>7</sup>

### ANALYSIS

The only points of contention in this case are how a one-centimeter calf atrophy should be rated under Table 17-6, page 530, of the A.M.A., *Guides*, and whether a conflict in the matter exists under 5 U.S.C. § 8123(a).

Under Table 17-6, a difference in calf circumference of 0 to 0.9 centimeters represents no impairment of the lower extremity. A difference of 1 to 1.9 centimeters represents an impairment of 3 to 8 percent. A difference of 2 to 2.9 centimeters represents an impairment of 8 to 13 percent. Where a range of impairment values is provided, the impairment value for the recorded measurement may be adjusted or interpolated proportionally within that range.<sup>8</sup>

Dr. Weiss measured a one centimeter difference in circumference between the left and right calf. This is at the lowest end of the 1 to 1.9 centimeter category and is just enough to constitute a ratable impairment. As the physical measurement was at the lowest end of the range given for that category, or three percent, the Office medical adviser allowed this rating under Table 17-6, page 530.

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<sup>3</sup> 20 C.F.R. § 10.404 (1999). Effective February 1, 2001, the Office began using the A.M.A., *Guides* (5<sup>th</sup> ed. 2001). FECA Bulletin No. 01-05 (issued January 29, 2001).

<sup>4</sup> 5 U.S.C. § 8123(a).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.0808.6.d (August 2002).

<sup>6</sup> *Clyde Franklin Kelly*, 26 ECAB 296 (1975).

<sup>7</sup> *John L. McClenic*, 48 ECAB 552 (1997). If the clinical findings are fully described, any knowledgeable observer may check the findings with the criteria of the A.M.A., *Guides*. A.M.A., *Guides* 17 (5<sup>th</sup> ed. 2001).

<sup>8</sup> E.g., A.M.A., *Guides* 453 (5<sup>th</sup> ed. 2001) (range of motion measurements for the upper extremity).

Dr. Weiss found that the smallest atrophy in the 1 to 1.9 centimeter category should be given the highest impairment value for that category, or 8 percent. This leaves no room to adjust or interpolate for other measurements between 1 and 1.9 centimeters. If 1.9 centimeters of atrophy can be worth no more than 1 centimeter of atrophy, then the range of impairment values given for that category collapses and becomes meaningless.<sup>9</sup>

On appeal, appellant's attorney argues that Dr. Weiss' rating conforms to the A.M.A., *Guides*. The Board does not agree. His rating for atrophy is incongruous with Table 17-6, page 530, and is not supported by adequate medical rationale. Example 17-4, page 530, shows a patient with one centimeter of calf atrophy, just as Dr. Weiss found in this case. The comment explains that this finding on physical examination represents a three percent impairment of the lower extremity. This is the rating provided by the Office medical adviser and conforms to the A.M.A., *Guides*. For this reason, the Board finds that the rating of the Office medical adviser constitutes the weight of the medical evidence and establishes a three percent permanent impairment of the left lower extremity due to calf atrophy. The eight percent rating reported by Dr. Weiss is of diminished probative value and is insufficient to create a conflict under 5 U.S.C. § 8123(a) warranting referral to an impartial medical specialist.

There is no issue on appeal regarding Dr. Weiss' three percent rating for pain. The Office medical adviser agreed with this rating, and appellant's March 26, 2004 schedule award incorporates it. Her three percent impairment due to calf atrophy combines with her three percent impairment due to pain for a six percent total permanent impairment of the left lower extremity,<sup>10</sup> for which she received a schedule award. The Board will affirm the Office's March 23, 2005 decision.

### **CONCLUSION**

The Board finds that appellant has no more than a six percent permanent impairment of her left lower extremity.

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<sup>9</sup> Indeed, there would be no need for a third category, as all atrophy greater than 1.9 centimeters would require a rating of 13 percent.

<sup>10</sup> A.M.A., *Guides* 604 (Combined Values Chart).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 23, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board